

NATHANIEL JOHNSON, #927305)	
)	
Plaintiff,)	2:11-cv-00291-JCM (CWH)
)	
vs.)	
)	
CHERYL, <i>et al.</i> ,)	ORDER
)	
Defendants.)	
	/	

Default judgment is appropriate “when a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise. . .” Fed. R. Civ. P. 55. Obtaining a default judgment entails two steps: “first, the party seeking a default judgment must file a motion for entry of default with the clerk of a district court by demonstrating that the opposing party has failed to answer or otherwise respond to the complaint, and, second, once the clerk has entered a default, the moving party may then seek entry of a default judgment against the defaulting party.” *See UMG Recordings, Inc. v. Stewart*, 461 F. Supp. 2d 837, 840 (S.D. Ill. 2006). Where a party has not been properly served, there is not basis for a court to enter default judgment. *See*

1 *Fairly v. Potter*, 2003 WL 402261, *4 (N.D. Cal. 2003).

2 The record before this court does not reflect that the defendants have been served. Rather,
3 plaintiff has recently filed a motion seeking to effect service of process by publication. Doc. #92. Until
4 plaintiff serves these defendants, there is no basis for either clerk's entry of default or default judgment.

5 Accordingly,

6 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that plaintiff's motion for entry
7 of clerk's default (doc. #106) be, and the same hereby is, DENIED.

8 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that plaintiff's motion for entry
9 of default judgment (doc. #107) be, and the same hereby is, DENIED.

10 DATED July 16, 2012.

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14 UNITED STATES DISTRICT JUDGE
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